

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

BILLY W HART

Claimant,

and

IOWA WORKFORCE DEVELOPMENT

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HEARING NUMBER: 09B-UI-08976

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: EMPLOYMENT APPEAL BOARD
: DECISION AFTER GRANTED REHEARING

NOTICE

THIS DECISION BECOMES FINAL unless a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

SECTION: 10A.601 Employment Appeal Board Review

DECISION

STATEMENT OF THE CASE:

The claimant filed an application for rehearing on the above-listed matter that was granted based on the fact the claimant was denied an opportunity to participate in the hearing because the agency failed to call the new telephone number he provided just days prior to the hearing date. The Board reopened the matter in order to consider the claimant's reason for his nonparticipation. The Board is now ready to issue its decision.

FINDINGS OF FACT:

The notice of hearing in this matter was mailed June 24, 2009. The notice set a hearing for July 9, 2009. The claimant contacted the agency to provide a telephone at which he could be reached on the day of the hearing. Just a couple of days prior to the hearing, the claimant contacted the agency, again, to provide a new number. On the day of the hearing, however, the claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the administrative law judge called the old number instead of the new one provided. The claimant did not receive a call and did not know the hearing was still taking place.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Here the claimant did not participate in the hearing through no fault of the claimant. The claimant substantially complied with the notice instructions by providing a number at which he could be reached.

Unfortunately, the administrative law judge did not call the new number provided just days prior to the hearing. For this reason, the matter will be remanded for another hearing before an administrative law judge so that the claimant may avail himself of his due process rights.

DECISION:

The decision of the administrative law judge dated July 10, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

